IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2654 OF 2000

IN

CRIMINAL APPLICATION NO.3099 OF 1999

IN

CRIMINAL WRIT PETITION NO.815 OF 1998

Shri Jagdish Vishindas Gursahani : Applicant

versus

The State of Maharashtra & ors. : Respondents.

Ms.Deepika Mohat i/by Sayaji Nangre for the applicant.

Mr.J.S.Saluja i/by M/s.M.V.Kini & Co. for Respondent Nos. 4 to 6, 8,9,10,12 & 14.

CORAM : D.G.DESHPANDE,J.

DATED : 20th December 2005.

ORAL ORDER (IN CHAMBER).

1. This applicant had earlier filed Criminal

Writ Petition No.815 of 1998. It came before me on 22nd July 1999. It was for hearing on that day. Nobody appeared for the applicant/petitioner. Respondent Nos.2, 4 to 11, 15, 16 and 18 were represented. They were heard by me and a detailed order came to be passed dismissing the petition. That order is dated 22nd July 1999. Thereafter the applicant/petitioner filed an application vide Criminal Application No.3099 of 1999 for setting aside or recalling of that order dated 22nd July 1999. That application came before me for hearing on 29th June 2000. Nobody appeared for the petitioner and, therefore, the Criminal Application No.3099 of 1999 came to be dismissed.

2. Now thereafter the applicant has filed another application vide Criminal Application No.2654 of 2000 which is the present application for restoration of Criminal Application No.3099 of 1999 and also for setting aside the order in the writ petition.

3. The counsel for the applicant submitted that this is a fit case for interference and for setting aside the order in writ petition. This

was strongly opposed by the counsel for the respondents on the ground that there is absolutely no reason or no explanation why initially the petitioner or his advocate were absent when the writ petition was decided. He also pointed out that Roznama of Criminal Application No.3099 of 1999 will show that advocate Mr.Nangare sought adjournment when the matter appeared before Justice Vishnu Sahai on 28th October 1999. Then on two occasions the adjournments were sought by the said advocate. Then the matter came before me on 29th June 2000 and nobody appeared.

4. Now this Application No.2654 of 2000 is filed by the applicant on 11th August 2000 i.e. after one and half months. There is absolutely no explanation about absence on both the occasions i.e. when the writ petition was decided on merits as well as Criminal Application No.3099 of 1999 was decided.

5. The counsel for the respondents drew my attention to the judgment of the Supreme Court reported in **2001 (1) Mah.L.J. 465 [Hari Singh vs. Harbhajan Singh** wherein it is laid down that

there is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. This judgment may not be directly helpful to the respondents because the original matter before me was the criminal writ petition. However, firstly the conduct of the applicant is totally negligent. He has no explanation to offer for this continuous absence. The writ petition No.815 of 1998 was not dismissed in default. If that had been done then the petitioner could have agitate that he should be heard in that matter. But the petition was decided by me on merits after hearing the advocates present at length. Therefore no case at all is made out for interference. Hence, Criminal Application No.2654 of 2000 is dismissed.

[D.G.DESHPANDE]

20/12/2005 **JUDGE.**